

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**JOHNNY M. HUNT,**

**Plaintiff,**

**v.**

**SOUTHERN BAPTIST CONVENTION, et al.,**

**Defendants.**

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**NO. 3:23-cv-00243**

**JUDGE CAMPBELL**

**MAGISTRATE JUDGE FRENSLEY**

**ORDER**

The Court is in receipt of Plaintiff's reply (Doc. No. 358) filed in support of his motion to reconsider wherein he argues that his declaration – executed and filed *after* Defendants had already made their motions for summary judgment and taken his deposition – creates a genuine issue of material fact as to whether Jane Doe consented to the sexual encounter.<sup>1</sup> Here, Hunt was directly and specifically questioned during his deposition about what Jane Doe did to express her consent:

Q. What was she doing to indicate that she was consenting to this sexual encounter?

A. Enjoying it.

Q. How did she indicate that?

A. By no resistance whatsoever. No frowns whatsoever.

Q. Was there any talk back and forth?

A. I don't remember a conversation. She's a very quiet person.

(Hunt Deposition at 217:15-23).

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<sup>1</sup> Q. So just to be clear, the sexual encounter was full breast exposure with kissing and fondling her breasts while they were exposed?

A. Correct. Correct.

Q. Anything else?


A. No, ma'am.

(Hunt Deposition at 230:16-21).

Even viewed in the light most favorable to Hunt and drawing all reasonable inferences in his favor, his foregoing testimony identifies what Jane Doe did *not* do. Stated another way, Hunt testified that Jane Doe did not *do* anything to indicate her consent. The second paragraph of Hunt's declaration states: "On July 25, 2010, I engaged in a brief, consensual extramarital encounter with Jane Doe." (Doc. No. 246 ¶ 2). It is well established in this Circuit that "a party cannot create a genuine issue of material fact by filing an affidavit, after a motion for summary judgment has been made, that essentially contradicts his earlier deposition testimony." *Penny v. United Parcel Service*, 128 F.3d 408, 415 (6th Cir. 1997).

On or before **May 30, 2025**, the parties shall file supplemental briefs addressing: (1) whether the second paragraph of Plaintiff's post-deposition declaration submitted at the summary judgment stage essentially contradicts his prior sworn testimony; and (2) whether that declaration constitutes an attempt to create a sham fact issue. *See Aerel, S.R.L. v. PCC Airfoils, L.L.C.*, 448 F.3d 899, 908-09 (6th Cir. 2006).

It is so **ORDERED**.

  
WILLIAM L. CAMPBELL JR.  
CHIEF UNITED STATES DISTRICT JUDGE